

REMARKS

Claims 30-33, 35-39, 41-45, 47-58, 60-97, 100 and 103-106 are now pending in this application.

Claim Objections

Claim 94 has been amended as suggested by the Examiner.

Rejections Under 35 U.S.C. § 112

Claims 30-33, 35-39, 41-45, 47-58, 60-97, 100 and 103-106 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the rejection is based on an alleged contradiction between claim 30's requirement that the device be situated "within" a first and second piercing, and the requirements of claims 105 and 106 that the device be released while "within" the first and second piercings (or the requirement of claim 30 that the device engage the tissue flaps).

The applicants respectfully traverse the rejection because the language of the claims are fully supported by the description and drawings of the application. The applicants respectfully point the examiner's attention to FIG. 8B,¹ which shows a device (specifically portion 134) that is situated within a first and a second piercing in first and second tissue flaps, respectively. This device further has a first portion (e.g., 114) that engages the first tissue flap and a second portion (e.g., 130) that engages the second tissue flap. The device has also been released while located within the first and second piercings as required by claims 105 and 106. (See also, application, pp. 28:19 – 31:2.)

It is respectfully submitted that the rejection proceeds as if the claim requires the "entire" device to be situated within the piercings. However, there is no limitation recited in the claim that requires the "entire" device to be situated within the piercings. Thus, because there is no

¹ Of course, this example from the specification is cited merely as one example of support and is in no way intended to limit the scope of the claims.

requirement that the "entire" device be situated within the piercings, there is no contradiction within claim 30 or between claims 30 and 105 and 106.

Double Patent Rejection

Claims 30-33, 35-39, 41-45, 47-58, 60-97, 100 and 103-105 were provisionally rejected on the grounds of nonstatutory obvious-type double patenting as being unpatentable over claims 111-210 of co-pending Application Serial No. 10/856,493 in view of U.S. Patent 7,288,105 (hereinafter "Oman"). A terminal disclaimer is filed concurrently with this Response to overcome this rejection.

Indication of Allowable Subject Matter

The Applicants thank the Examiner for the indication of allowable subject matter. As the Applicants have already addressed the rejections under 35 U.S.C. § 112 and the double patenting rejection above, the Applicants respectfully submit that the claims are now in condition for allowance.

CONCLUSION

Prompt and favorable action on the merits of the claims is earnestly solicited. Should the Examiner have any questions or comments, the undersigned can be reached at (949) 567-6700. The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 15-0665.

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

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By: /s/ Mark Stirrat

Mark Stirrat

Reg. No. 50,756

ORRICK, HERRINGTON & SUTCLIFFE LLP

4 Park Plaza, Suite 1600

Irvine, CA 92614

949/567-6700 Telephone

949/567-6710 Facsimile